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KANSAS AND MISSOURI

November 8, 2011

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VIA FACSIMILE: (202) 245-0464

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

Re: STB Docket No. AB-1053 (Sub-No. 2X), Michigan
Air-Line Railway Co.-Abandonment Exemption-
Line in Oakland County, Michigan

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is the Reply to American Plastic Toys, Inc.'s Request for Stay of Decision Released October 19, 2011. Please date stamp this copy and fax the date-stamped copy to me at (785) 232-1866.

I am mailing to you today the original of this document, along with ten copies for filing in this docket.

Thank you for your assistance in this matter. If there are any questions concerning this filing, please contact me by telephone at (785) 232-0753 or by email at the email address shown above.

Very truly yours,



W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:bjb

Enclosures

cc: R. Robert Butler
Dirk H. Beckwith, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 2X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**REPLY TO AMERICAN PLASTIC TOYS, INC.'S
REQUEST FOR STAY OF DECISION RELEASED OCTOBER 19, 2011**

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Dated: November 8, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 2X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**REPLY TO AMERICAN PLASTIC TOYS, INC.'S
REQUEST FOR STAY OF DECISION RELEASED OCTOBER 19, 2011**

I. BACKGROUND

On July 1, 2011, Michigan Air-Line Railway Co. ("MAL Railway") filed in the above-referenced docket a Petition for Exemption ("Petition"), which was filed pursuant to 49 U.S.C. § 10502, seeking exemption from the prior approval requirements of 49 U.S.C. § 10903, in order to abandon its rail line ("Line") in Oakland County, Michigan. American Plastic Toys, Inc. ("APT"), the sole shipper on the Line, filed a Reply and Objection ("Objection") to the Petition, and on August 30, 2011, MAL Railway filed a Petition to waive the Board's general rule prohibiting a "reply to reply" and sought the Board's permission to file a surreply ("Surreply") to the Objection.

This docket was decided by the Board on October 18, 2011, but the decision ("Decision") was a late release on October 19, 2011 (the Service Date). The Board's Decision denied MAL Railway's Petition to file a Surreply, but granted MAL Railway's Petition. The Decision provided that the Exemption is to be effective November 18, 2011, and it established a deadline of November 3, 2011, for filing a Petition to stay the Decision's effective date.

II. RESPONSES TO APT'S REASONS FOR REQUESTING EXTENSION OF EXEMPTION'S EFFECTIVE DATE

On November 3, 2011, APT filed a Request for Stay of Decision Released October 19, 2011 ("Request for Stay"), to which two exhibits were attached. By filing this Reply ("Reply") to APT's Request for Stay, MAL Railway records its objection to extending the effective date of the Exemption.

The reasons advanced by APT in support of its Request for Stay are identical to the reasons advanced by Jim Grau, Treasurer of APT, in Mr. Grau's Verified Statement ("Grau VS"), which is attached to the Request for Stay as Exhibit 1. To fully understand Mr. Grau's Verified Statement, it is important to understand the sequence of events giving rise to his Verified Statement.

Initially, it is to be noted that Mr. Grau states that, prior to the release of the Decision on October 19, 2011, APT ordered two cars for delivery on November 4, 2011 and one car was ordered for delivery on November 18, 2011. Grau VS at 1. Several observations regarding this statement are pertinent.

First, APT's ordering of cars prior to issuance of the Decision was ill-advised. APT knew or should have known that the Board's Decision would be made in this docket not later than October 18, 2011. The basis for making this determination is provided in 49 CFR § 1152.27(b)(2), which states in part: "Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner." Thus, pursuant to this requirement, the Board's Decision in this docket was to be made no later than 110 days after the Petition was filed. MAL Railway's Petition was filed July 1, 2011, and 110 days after that date is October 18, 2011, which is the date the Board made its decision, although the Service Date was October 19, 2011.

Similarly, APT knew or should have known that the effective date of the Decision would more than likely be effective 30 days after the Decision's Service Date (i.e., November 19, 2011). See 49 CFR § 1121.4(e). The Decision established an effective date of November 18, 2011.

Thus, in considering whether to order cars for delivery to the CSX interchange, APT should have considered the possibility that the Board might grant the Exemption sought by MAL Railway in this docket and the date when that Exemption most likely would be effective. Within that context, APT should have considered, for example, whether ordering cars for delivery on November 4, 2011, would permit the delivery, unloading and return of those cars prior to the probable effective date of the Decision.

Here, it is important to note that, prior to the date when the Request for Stay was filed, the last date that APT requested MAL Railway to return an empty car to the CSX interchange was October 28, 2011. Mr. Grau advises that there are currently nine railcars at the plant site. According to MAL Railway's records, one of those railcars (UTCX 50971) was delivered to APT on September 23, 2011; one car (CRIX 11254) was delivered on September 21, 2011; three cars (XOMX 720223, GPLX 77707 and UTCX 53445) were delivered on October 13, 2011; four cars (ECUX 882211, TKX 620184, GPLX 78150 and RDX 20039) were delivered on October 23, 2011; and one additional car (UTCX 58434) was delivered on October 27, 2011. On November 4, 2011, two cars (GPLX 77707 and UTCX 53445) were returned empty to the CSX interchange, and on November 8, 2011, the two cars ordered by APT prior to the Decision were delivered to APT, and two cars (CRIX 11254 and UTCX 50971) were returned empty to the CSX interchange.

Based on the time required to order cars to have them delivered by the dates listed above for the inbound traffic received by APT since September 13, 2011, MAL Railway respectfully submits that, when APT ordered cars prior to the Decision for delivery on November 4, 2011, APT was aware of all the inbound traffic (nine cars, according to Mr. Grau) that would be present at the plant when those cars were delivered to APT. It also is submitted that, at the time these

cars were ordered, APT was aware of the capacity in its storage silos at the plant and the time required to unload a railcar loaded with plastic pellets. Armed with this information at the time it ordered these cars, APT was aware that these cars, along with the other cars located on the plant's siding could not be unloaded and then returned empty to the CSX interchange prior to the effective date of the Decision. Now, because of these bad business decisions, APT is asking the Board to delay the termination of MAL Railway's common carrier obligation to serve APT and to delay the time when salvage operations on the Line can be commenced.

In summary, at the time APT ordered cars for delivery on November 4, 2011:

- ♦ APT had to be aware of the possibility that the Board might grant the Exemption sought by MAL Railway in this docket;
- ♦ APT knew or should have known, as noted previously, that the decision date in this docket was October 18, 2011;
- ♦ APT knew or should have known, as noted previously, that the probable effective date of the Decision was November 18, 2011; and
- ♦ APT knew that, because of its storage capacity limitations at its plant, the cars being ordered for delivery on November 4, 2011, and the other cars remaining on the plant siding when these cars were delivered, could not be unloaded and returned empty to the CSX interchange by November 18, 2011.

From the foregoing, it should be apparent that, at the time APT ordered cars for delivery on November 4, 2011, APT was either:

1. Gambling that the Board would not grant the Exemption, and now, having lost that gamble, is seeking assistance from the Board to compensate for APT's bad management decision; or
2. Indifferent to the fact that, if the Board granted the Exemption, APT could not unload all of the cars then located at its plant or subsequently being delivered to the plant, because of capacity limitations, and then deliver empty all of those cars to the CSX interchange

prior to November 18, 2011, and is now asking the Board to overlook its indifference and extend the time for APT to remove its cars from its plant.

Mr. Grau claims that MAL Railway's representative, B. Allen Brown, has not agreed to schedule equipment and crew necessary to relocate the cars currently on the plant site, so that they can be unloaded at the pumping station. Grau VS at 1. That claim is false. In the first place, Mr. Brown is not a "representative" of MAL Railway. Mr. Brown is an employee, and does not represent MAL Railway. Second, the following chronology of the communications between MAL Railway and APT in the few days prior to APT filing its Request for Stay clarify this situation:

1. On October 31, 2011, Linda Tinker, APT's bookkeeper, telephoned Marty Ramsey, CFO of MAL Railway, inquiring as to MAL Railway's invoice for the month of November 2011. Normally, the invoice for services for the succeeding month is mailed on or about the 15th day of the month. However, Mr. Ramsey explained that he waited for the issuance of the Decision before sending the invoice, since he wanted to make sure that the Exemption was granted by the Board.

2. On October 31, 2011, Mr. Ramsey wrote to APT advising of the termination of rail service on November 19, 2011 and enclosing the invoice for the month of November. A copy of that letter is included in Exhibit 2 attached to the Request for Stay.

3. On November 1, 2011, APT contacted B. Allen Brown, and requested that cars on APT's plant be relocated to enable unloading of cars. Mr. Brown responded that he could not provide service until the invoice for November was paid. That response was directed by Mr. Ramsey.

4. At 5:42 p.m. on November 1, 2011, Mr. Ramsey sent APT a copy of his October 31st letter as an attachment to an email, recognizing that APT probably had not received his letter in the mail. And it also was prompted by telephone calls from Mr. Brown, advising that APT wanted relocation services provided.

5. Early in the morning of November 2, 2011, Mr. Grau telephoned Mr. Ramsey expressing his belief that the invoice for the month of November should be prorated to the final date of service on November 18, 2011. Mr. Ramsey advised that MAL Railway disagreed. Many of the costs that are covered by the flat fee being billed to APT are not prorated, such as the monthly rental of the locomotive, B. Allen Brown's monthly compensation and other similar costs paid on a monthly basis.

6. By mid-morning on November 2, 2011, APT had wire transferred the amount of the November invoice, and Mr. Ramsey thereupon directed Mr. Brown to mobilize the train crew and commence the intraplant movement (relocation) of cars situated at APT's plant, to facilitate unloading of cars.

7. On November 3, 2011, MAL Railway learned by reading the Request for Stay that APT had ordered two cars for delivery on November 4, 2011. At no time prior thereto had APT contacted MAL Railway to advise of the ordering of these cars. This typifies the manner in which APT has done business throughout its relationship with MAL Railway.

8. As noted above, MAL Railway immediately mobilized its train crew to accommodate delivery of the cars ordered by APT prior to the Decision and to return empty cars previously delivered.

Any suggestion or implication in the Request for Stay that MAL Railway has not cooperated in moving APT's railcars is totally without merit. Why would MAL Railway not cooperate? There is nothing that MAL Railway wants any more than to have the Line abandoned, thereby terminating its common carrier obligation to serve APT. It is clearly in MAL Railway's best interest to have all of APT's railcars returned to the CSX interchange. This could have been accomplished in a timely manner had APT diligently

pursued the unloading of the inbound traffic it has received since September 23, 2011, most of which has been situated at APT's plant for many weeks. Instead, APT has used these railcars for storage. MAL Railway should not now be denied the ability to terminate service to APT because of APT's bad business decisions.

MAL Railway also is aware that APT has, on previous occasions, transloaded into motor vehicles the plastic pellets delivered to the plant in railcars, for transportation and delivery to another APT facility in the State of Michigan. MAL Railway believes that this course of action should be pursued to a greater extent, in order that railcars now at APT's plant can be returned empty to the CSX interchange in a timely manner.

MAL Railway has entered into a Salvage Contract with A & K Railroad Materials, Inc., to remove the rails, ties and other track materials from the Line. The Salvage Contract is effective November 19, 2011, in order that A & K can get a jump on salvage operations prior to the onset of winter (which can be severe in Oakland County, Michigan) and at a time when steel prices are favorable. Extending the effective date of the Exemption for 30 days will thoroughly frustrate the timely commencement of salvage operations.

III. CONCLUSION

For the above-stated reasons, MAL Railway respectfully requests the Board to deny APT's request for an extension of the effective date of the Decision. Rather, the Board should direct APT to employ such measures as are necessary to accomplish the unloading of cars now situated at APT's plant and return them empty to the CSX interchange on or before November 18, 2011. Such measures might include the transloading of the plastic pellets in the cars located at the plant into motor carriers, for transportation and delivery to APT's other facility in the State of Michigan. Perhaps

engaging additional work crews to work additional hours might help accomplish this objective.

Respectfully Submitted,



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Attorney for Michigan Air-Line Railway Co.

Dated: November 8, 2011

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on this 8th day of November, 2011, served a copy of the above and foregoing Reply to American Plastic Toys, Inc.'s Request for Stay of Decision Released October 19, 2011, upon all parties of record in this proceeding, by sending a copy thereof by first-class mail, postage prepaid, to:

Troy R. Taylor
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